

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/839,171	HJERTMAN ET AL.	
	Examiner	<b>Art Unit</b>	
	Davienne Monbleau	2878	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to the amendment filed on 7/20/04.
2.  The allowed claim(s) is/are 111-162.
3.  The drawings filed on 8/28/01 are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All    b)  Some\*    c)  None    of the:
    1.  Certified copies of the priority documents have been received.
    2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

#### Attachment(s)

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

**EXAMINER'S COMMENT AND STATEMENT OF REASONS FOR ALLOWANCE*****Response to Amendment***

The amendment filed on 7/20/04 has been entered. Claims 40-84, 86-106 and 108-110 have been canceled. New Claims 111-162 have been added. Claims 111-162 are pending.

The Applicant's arguments filed on 7/20/04 have been carefully considered and found persuasive.

Regarding Claims 149-156 and 162, the Applicant argued on pages 13-17 of the response that the cited prior art of record (*Walker*) does not teach or fairly suggest comparing the characteristics of the received radiation with a predetermined characteristic representative of a predetermined functional property of the container or its content. The Applicant states in the specification (page 22 lines 8-12) that a functional property is understood as any characteristic of an object not applied to transfer information to the device but is present for the intended operational purpose of the device or as the result of the object manufacturing or use history. In other words, the Applicant is directly measuring a property of the container or its contents rather than reading information off of a label. Thus, although *Walker* teaches scanning a bar code label that is adhered to a container, wherein said label contains information regarding the container and its contents, reading a bar code is not detecting a characteristic representative of a predetermined functional property as claimed by the Applicant.

Further regarding Claims 149-156 and 162, Examiner would like to note that *Goldman* does teach in Figure 1 comparing the characteristics of the received radiation with a predetermined characteristic representative of a predetermined functional property of the container or its content. However, there is no motivation to modify *Walker* with the teachings of

*Goldman*, or visa-versa, because a proposed modification cannot render the prior art unsatisfactory for its intended purposes and cannot change the principle of operation of a reference. (See MPEP 2143.01[R-2]). By modifying *Walker* to measure a predetermined functional property, *Walker* no longer does its intended purpose of reading a bar code on a container.

Regarding Claims 111-148 and 157-161, the Applicant argues on pages 17-21 of the response that the cited prior art of record (*Walker*) does not teach that the affected radiation from at least an area part of the container position is received in a non-imaging way. *Walker* teaches in Figure 1 using a scanner to read a bar code that is attached to a label, which is an imaging method. As mentioned above, a proposed modification cannot render the prior art unsatisfactory for its intended purposes and cannot change the principle of operation of a reference. (See MPEP 2143.01[R-2]). Thus, there is no motivation to modify *Walker* to use non-imaging means, as taught by *Goldman* in Figure 1, because *Walker* would not longer do its original intended purpose of using imaging means (reading a bar code) to determine the contents of the container.

As a final note, using *Goldman* as the primary reference does not solve the deficiencies of *Walker*. *Goldman* does not teach a mechanism operable to deliver at least part of the preparation in the container through the opening. Although *Goldman* teaches in column 4 lines 57-58 that other containers may be used, his embodiments and description are drawn towards bag-type containers. Furthermore, there is no indication that “other containers” may include containers that comprise a mechanism operable to deliver at least part of the preparation in the container through the opening or that the apparatus (10) is capable of utilizing such a mechanism.

***Allowable Subject Matter***

Claims 111-162 are allowed.

The following is an examiner's statement of reasons for allowance:

Regarding Claims 111-148 and 157-161, the cited prior art does not teach or fairly suggest a method for operating a preparation delivery device comprising, along with the other claimed features, receiving at least a part of the affected radiation from at least an area part of the container position in a non-imaging way.

Regarding Claims 149-156 and 162, the cited prior art does not teach or fairly suggest a method for operating a preparation delivery device comprising, along with the other claimed features, comparing the characteristics of the received radiation with a predetermined characteristic representative of a predetermined functional property of the container or its content, to establish if the predetermined functional property of the container or its content is present and thereby verify a status of the container acceptable for use.

The advantages of these features are in the specification on pages 1-8.

***Conclusion***

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davienne Monbleau whose telephone number is 571-272-1945. The examiner can normally be reached on Mon-Fri 9:00 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Porta can be reached on 571-272-2444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Danielle Monbleau*

DNM



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